CHAPTER THIRTEEN

Free Trade, Fair Trade, and the Battle for Labor Rights

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Creative new organizing, bargaining, and internal restructuring initiatives make up the core of the U.S. labor movement's revitalization project. But close to the center and growing in importance as global commerce expands is new union advocacy for workers' rights in international trade. Trade unionists in the United States and in many other countries are rallying behind the demand that no country and no company should gain a competitive advantage by killing union organizers, banning strikes, using forced labor or brutalized child labor, or violating any other basic rights of workers.

The movement to link workers' rights and trade draws strength from a renewed labor movement. It also contributes to labor's transformation, driving a new internationalism within trade unions and building ties with allied environmental, human rights, and other social action communities. In the legislative arena, labor rights advocacy gives unions new clout in trade and investment policy battles as they raise demands for enforceable rules in the global trading system against state-sponsored or state-tolerated labor rights violations.

Free-trade proponents condemn unions' call for a labor rights–trade linkage as a veneer for old-fashioned protectionism. Indeed, some unions want to protect their members' jobs from imports. As democratic bodies responsive to constituents' interests, they could hardly do otherwise. Shifting trade and investment flows hurt many workers, especially in import-sensitive sectors like apparel and electronics. Trade also affects workers in these industries and other manufacturing operations such as auto parts and machine tools in which companies can move—or credibly threaten to move—production overseas (Commission for Labor Cooperation 1997). Trade puts downward pressure on jobs and wages in these sectors, with spillover effects for many other

workers. Often union jobs with good wages and benefits are those most harmed. These losses drive down standards, making wages and conditions in lower-wage service jobs the new benchmark for workers in local or regional labor markets (Collins 1998).[1]

While some unions stress short-term protection of members' jobs, the broader U.S. labor movement, especially the AFL-CIO, works closely with unions in developed and developing countries worldwide to forge a common program supporting global trade (International Confederation of Free Trade Unions 2000). Unions understand that workers in developing countries need access for their goods to U.S., European, Japanese, and other advanced industrial countries' markets, and that U.S. workers can gain from expanded trade with increased exports to developing countries. The key demand of unions in both developed and developing countries is for labor rights and human rights to be treated as seriously as property rights in the trading system (Mazur 2000).

For decades, global trade and investment policy was the exclusive province of government officials in the Treasury Department; the Commerce Department; the Office of the United States Trade Representative (USTR); of corporate lawyers, bankers, and economists in Washington, New York, Chicago and Boston; and of bureaucrats in the General Agreement on Tariffs and Trade (GATT), the forerunner of the World Trade Organization (WTO); the International Monetary Fund (IMF); the World Bank; and other international bodies. These specialists viewed calls for workers' rights, human rights, environmental protection and other social links to trade as irritants raised by economic simpletons. For much of the last quarter-century they imposed what came to be called the "Washington Consensus" on global trade and investment policy—liberalizing markets, privatizing state enterprises, making labor laws more flexible (most notably by making it eas-

[1]Economists dispute the degree, but not the fact, of trade's effect on wages and conditions of working people. Often affected workers are characterized as "unskilled," as if they are a small group that needs only retraining to cope in today's economy. But the so-called unskilled are really a large majority of workers, those without professional or advanced technical training. For a thorough treatment incorporating many points of view, see Susan M. Collins, ed., *Imports, Exports, and the American Worker* (Brookings Institution, 1998).

ier for firms to fire workers), removing conditions on capital flows, and otherwise eliminating constraints on the activities of multinational companies.

By the time the North American Free Trade Agreement (NAFTA) was approved in 1993 and the WTO was created in 1994, the Washington Consensus was rolling and new horizons beckoned. A Free Trade Agreement of the Americas (FTAA) would extend NAFTA throughout the hemisphere. A Multilateral Agreement on Investment (MAI) would extend NAFTA's investor protection clauses worldwide. A new round of WTO trade talks would open services, agriculture, and other economic sectors to Washington Consensus treatment. A new acronym, TINA (There Is No Alternative), overshadowed demands for social considerations in trade policy (Smith 1999). Multinational companies adamantly opposed linking workers' rights and trade (U.S. Council for International Business 1996).

But starting in the mid-1990s, a revitalized labor movement, allied with environmental, human rights, farmers, consumers, and other social action communities, began braking the Washington Consensus train. In 1997 they mustered the political strength in the United States to defeat "fast-track" trade negotiating authority for the president, the first time the White House was denied a free hand to broker new trade deals (Abramson and Greenhouse 1997).[2] The same year saw the creation of the World Bank's Structural Adjustment Participatory Review Initiative (SAPRI) to engage trade unions and nongovernmental organizations in reviews of Bank policy effects on workers and other social actors (Suzman 1997).

In 1998, working on an international scale, free-trade critics stopped the MAI (Kobrin 1998, Drohan 1998, Lawton 1998) and forced FTAA negotiators to open their doors to civil society. In 1999 a massive mobilization halted in its tracks the WTO's plan for a new round of trade negotiations. In 2000 a labor-led alliance mounted a spirited campaign to maintain annual review by Congress of most-favored-nation trade

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[2]"Fast track" is Washington shorthand for the legislative process by which Congress, empowered under the Constitution to regulate commerce with foreign nations, delegates trade negotiating power to the executive branch. An agreement made by the president is then submitted to Congress for approval or rejection without amendment.

status for China (renamed "permanent normal trade relations" to soften the public impression of what China was being granted) based on human rights and labor rights considerations.

The China trade bill was approved by Congress over union opposition (Schmitt and Kahn 2000). However, the fierceness of the labor movement's resistance yielded new respect for labor's political strength (Greenhouse 2000). The unions' mobilization also made a permanent mark on U.S. trade and labor policy. As a price of passage, Congress created a commission to review human rights and labor rights with a major trading partner. Unions called it a "fig leaf" in the heat of the lobbying battle, but the new commission provides an ongoing forum for continued activism, scrutiny, and pressure for workers' rights in trade. Beyond the creation of a commission, the intensity of labor's campaign ensured that the issue of workers' rights in trade would stay high on the agenda of the 2000 presidential and congressional elections and in policy debates of the new Congress (Peterson 2000).

Labor's new strength in the trade debate is matched by a new corporate fallibility. The Asian financial crisis and its "tequila effect" in Latin America, the Russian economic fiasco, and other economic crises of the late 1990s in what had been highly touted emerging markets fractured the model of untrammeled capital flows promoted by multinational executives and investors. The crisis called into question not only the competence but also the existence of the IMF and World Bank (Elliott 2000, Naim 2000).

Cracks also appeared in the ranks of the trade priesthood. Joseph Stigliz, the chief economist of the World Bank, shocked his counterparts with revelations of Bank and IMF scorn for human rights and the environment (Stiglitz 2000). Stiglitz coupled his critique with a call to incorporate labor standards and environmental protection into trade agreements. After his term as chief economist ended, his candor got him fired as a World Bank consultant, but his voice prompted serious reconsideration of the relationship between social causes and global trade. Even *Fortune* magazine, after April 2000 protests in Washington at the annual meetings of the World Bank and the IMF, said it was time to take seriously the protests of the labor movement and its allies (Useem 2000).

New leadership in the U.S. labor movement played a key role in derailing the Washington Consensus. The AFL-CIO's old regime unsuccessfully challenged the free-trade thrusts of the 1980s and early 1990s, most notably in the NAFTA defeat of 1993. Former leaders could hardly shape an international trade-union consensus and lead a movement for workers' rights when the U.S. federation's international affairs apparatus was viewed around the world as an extension of the U.S. government. For decades the AFL-CIO's "free labor" institutes intervened in foreign labor movements to prop up unions that supported U.S. foreign policy whether or not they were representative or effective. AFL-CIO agents often broke up more radical unions with a broader popular base among workers. From such a foundation, U.S. labor calls for workers' rights in global trade rang hollow.

The Sweeney leadership, however, brought new directors into the AFL-CIO's international affairs department. They replaced the old free-labor institutes with a new Solidarity Center and put new representatives into field offices around the world. Both in Washington headquarters and in the field, many of these new staffers had earlier been active in efforts to create an alternative progressive international current in the labor movement, often in the face of heavy resistance from AFL-CIO officials of the old regime. Buoyed by new blood and a fresh approach to relations with foreign trade unionists, the AFL-CIO's international affairs activities targeted multinational corporations and workers' rights violations around the world with a new focus on labor rights in global trade.

Historical Background

Historical perspective helps clarify the current struggle for labor rights in trade. Current debates on international labor and trade policy reflect disputes that raged a century ago in the domestic sphere. The U.S. economy grew from one grounded in local and regional commerce to a continental scale in the late nineteenth and early twentieth century. A labor movement rooted in local crafts had to respond with a "continentalization" of its own.

In the late nineteenth and early twentieth century, skilled trades workers such as those in railroads and the new electric-power generation industry formed new national unions. Along with industrial groups, such as miners and brewery workers, they built the American Federation of Labor (and a shorter-lived International Workers of the World). The new labor bodies coordinated trade-union action against rapidly consolidating employers that increasingly operated at a regional and national level across state lines.

In the 1930s the idea of industrial unionism took hold. A Congress of Industrial Organizations gathered mass production workers in new unions of steel, auto, rubber, and electrical workers to confront employers on a national stage—and an international stage, where companies had Canadian branches (the reason why many unions today are still called "the international").

Public policy in economic and labor matters followed a similar trajectory. The labor, populist, and other social reform movements of the late nineteenth and early twentieth century made the first breakthroughs across state lines. The 1914 Clayton Act declared that "the labor of a human being is not a commodity or article of commerce." The Railway Labor Act of 1926 set rules for union organizing and bargaining in that important national industry. The Wagner Act of 1935 soon followed, defining unfair labor practices and creating the National Labor Relations Board (NLRB) to enforce the law in private industry throughout United States.

Citing the Commerce Clause of the Constitution, which empowers Congress to regulate interstate trade, the Supreme Court upheld the constitutionality of the Wagner Act in 1937. Congress went on to pass the Fair Labor Standards Act of 1938, which mandated a federal minimum wage, overtime pay after forty hours in a workweek, and limits on child labor. In decades that followed, the same federal jurisdiction was asserted to pass prevailing wage, equal-pay, nondiscrimination, health and safety, plant-closing advance warning, family and medical leave, and other legislation setting federal minimum employment standards for the entire country.

Many labor advocates are swift to argue that these laws are too weak or too weakly enforced. Even so, these norms create a threshold below

which individual states cannot go in efforts to attract investment by cutting labor standards. Federal standards block a "race to the bottom" among the states.

Of course, the race continues in other arenas. Unemployment insurance and workers' compensation remain state-based labor standards, and employers aggressively attack these protections, pressuring states to compete with each other with lower benefits and tighter eligibility rules. State labor federations devote much of their work to defending these programs. Furthermore, the federal minimum wage is so low that some states, especially those taking advantage of "right-to-work" laws, still trumpet a low wage, antiunion climate to attract investment. Low-wage countries overseas are hardly the only engine of plant closings and runaway shops, as workers in traditional industrial centers learned when employers moved to other parts of the United States.

The struggle for labor rights and labor standards in yesterday's interstate commerce within the United States foreshadowed today's battles over international trade policies. Workers and trade unions face the challenge of achieving labor rights and labor standards across national borders, just as American workers earlier had to win them across state boundaries. Workers in other countries confronted similar tasks–the United States is not exceptional in fashioning national standards for diverse regional and local jurisdictions. And just as workers and unions confronted nationwide industries and companies, they now are up against multinational banks and corporations with highly mobile capital at their disposal.

The Contemporary Labor Rights Movement

Progress on labor rights in trade did not begin with the advent of new AFL-CIO leadership, even if the most visible markers have been set since 1995. For many years earlier, the labor movement opened many fronts and made headway in the battle for workers' rights. International labor rights advocacy gained ground in four broad arenas.

1. In a unilateral context, American trade-union advocates achieved labor rights amendments in several U.S. trade laws that made respect for workers' rights a condition of foreign countries' duty-free access to the U.S. market and other trade, foreign aid, or development benefits. In a series of labor-rights petitions under these laws, U.S. unionists and allied groups spurred improvements in many countries and applied sanctions where violations continued.
2. Although they viewed NAFTA's passage as a defeat and roundly criticized the trade agreement's labor side agreement, labor activists in the United States, Canada, and Mexico increasingly used the North American Agreement on Labor Cooperation (NAALC) to advance cross-border solidarity.
3. In a global context, the International Labor Organization (ILO), the WTO, the Organization for Economic Cooperation and Development (OECD), the World Bank, and other multilateral institutions became important international forums for asserting workers' rights. Trade unions around the world found creative ways to press these bodies for advances in labor.
4. Private actors, especially trade unions, also operated outside these government-sponsored institutional arrangements and created their own tools to build labor rights into trade and investment systems. International labor-right advocacy has become central to the work of the International Confederation of Free Trade Unions (ICFTU) and regional affiliates such as the Inter-American Regional Organization of Workers (ORIT), and of International Trade Secretariats (ITS's) that join unions across the world by industry or sector.

Labor and human rights groups also pressured multinational companies to adopt codes of conduct for their foreign subsidiaries or suppliers, and are devising creative ways to apply and enforce such codes. Other labor-allied groups used media strategies to expose labor rights violations in countries where firms supply U.S. brand-name products, or promoted "labeling" measures aimed at consumers who want assurance that products are made under decent working conditions.

1. U.S Unilateral Labor Rights Action

In the early 1980s a small group of labor, religious, and human rights activists began meeting with progressive congressional staffers to shape new initiatives in U.S. trade and labor policy. Alarmed by the free-market, free-trade offensives of the Reagan-Thatcher era and frustrated by narrow trade policy responses by unions (often reflected in Labor Day events that featured smashing a Japanese product), they launched a legislative reform effort to insert labor rights amendments into U.S. trade laws.

A first, a modest breakthrough came in 1983 with adoption of the Caribbean Basin Initiative (CBI), a program for preferential access to the U.S. market for Central American and Caribbean countries. The CBI labor rights amendment contained benefits such as duty-free entry into the United States on exporting countries' compliance with internationally recognized worker rights.

In 1984 a farther-reaching labor rights amendment was added to a bill renewing the Generalized System of Preferences (GSP). The GSP program granted developing nations around the world beneficial, duty-free access for selected products entering the U.S. market. "Taking steps to afford" internationally recognized worker rights became a requirement for participation in the GSP. Just as important, the GSP reform act had the USTR set up a petitioning process, something lacking in the earlier CBI legislation. Now trade unions, human rights groups, and others could challenge a country's GSP beneficiary status because of labor rights violations by filing a complaint with the USTR presenting evidence at the public hearing.

The GSP program permits a developing country to export goods to the United States on a preferential, duty-free basis as long as it meets the conditions for eligibility in the program. The "internationally recognized worker rights" defined in the legislation are the following:[3]

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[3]It is important to note that these standards are not explicitly linked to ILO conventions or any other accepted international norms. The first four items match most formulations of "core" or "human rights" labor standards. However, the U.S. legislative scheme fails to include a universally recognized core standard for nondiscrimination in employment. This element was rejected by Reagan administration officials who negotiated a compromise bill acceptable to the White House with Ways and Means Committee members (Travis 1992).

1. The right of association
2. The right to organize and bargain collectively
3. A prohibition on the use of any form of forced or compulsory labor
4. A minimum age for the employment of children
5. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health

The United States was not alone in developing a unilateral labor rights regime. Acting as a bloc, the European Union also adopted a labor rights clause in its GSP program that offered enhanced access to European markets for developing countries that respected workers' freedom of association, did not discriminate in hiring because of race or sex, and provided for child labor protection (Buckley 1997).

Since adoption of the GSP labor rights amendment in 1984, worker advocates have filed complaints on labor rights conditions in more than forty countries under the GSP process. The most active petitioners were the AFL-CIO; individual unions including the UE, IUE, and UFCW; and non-governmental organizations (NGOs) such as the International Labor Rights Fund and various divisions of Human Rights Watch—Asia Watch, Africas Watch, and Americas Watch.

Twelve countries were suspended from GSP beneficiary status because of labor rights violations in the 1980s, including military dictatorships in Chile, Paraguay, Burma, and Pakistan. More than a dozen more were placed on continuing review, including repressive regimes in Guatemala, Haiti, Indonesia, and El Salvador. Several of the suspended countries undertook labor reform measures to meet GSP requirements, and the review process persuaded others to make improvements. The benefits cutoff shocked business elites in Chile and Paraguay, and contributed to the partial restoration of democracy, including more freedom for workers.

In Guatemala, pressure generated by the GSP review helped avert a military takeover in 1993, and later helped gain the first union recognition and collective bargaining agreement in that country's *maquila* sector (Frundt 1999). Similar progress was made in the Dominican Republic, where unionism began taking root in the export processing zones (Jessup and Gordon 2000).

This should not suggest that the GSP labor rights amendment, or any other labor rights amendment in U.S. trade laws, has gone from triumph to triumph. Chile and Paraguay are hardly full democracies, and trade unions still face terrible obstacles there. Guatemala has not overcome the legacy of four decades of military terror, and one or two labor contracts in its rapidly growing export sector, like the handful of contracts in the Dominican Republic's *zonas francas,* hardly augurs trade-union dynamism. Still, in concrete measure, and sometimes in life or death cases, unilateral labor rights action by the United States made a difference.

2. NAFTA and the NAALC

The NAFTA labor agreement sets forth eleven "labor principles" that the three signatory countries commit themselves to promote:

1. Freedom of association and protection of the right to organize
2. The right to bargain collectively
3. The right to strike
4. Abolition of forced labor
5. Prohibition of child labor
6. Minimum wage, hours of work, and other labor standards
7. Nondiscrimination
8. Equal pay for equal work
9. Occupational safety and health
10. Workers' compensation
11. Migrant worker protection

The NAALC provides an accessible forum for trade unions and human rights groups to invoke a critical review of a country's labor law and practice. For three of the eleven labor principles (child labor, minimum wage, and safety and health), an arbitration panel can impose trade sanctions for a persistent pattern of failure to effectively enforce national law.

The NAALC labor rights system inspired cross-border initiatives among labor rights advocates in all three NAFTA countries. International coalitions filed more than twenty cases involving union organizing rights, health and safety abuses, discrimination, migrant worker

treatment, and other labor rights issues. The cases were submitted to a National Administrative Office (NAO), the agency in each country's labor department that receives complaints of NAALC violations by a NAFTA partner.

Three cases are described here, one on each country, to illustrate the opportunities for, and limitations of, transnational advocacy presented by the NAALC.

THE PREGNANCY TESTING CASE

Two U.S.-based human rights groups, Human Rights Watch and the International Labor Rights Fund, along with the Mexican Democratic Lawyers' Association, filed a complaint with the NAO of the United States in May 1997 alleging "a pattern of widespread, state-tolerated sex discrimination against prospective and actual female workers in the *maquiladora* sector along the Mexico-U.S. border."[4] Companies named as offenders in the case included General Motors, Zenith, Siemens, Thomson, Samsung, Sanyo, Matsushita, Johnson Controls, and other multinational firms.

The submission challenged the common practice of requiring pregnancy testing of all female job applicants and denying employment to those whose test results were positive. The submission also said that employers pressure employees who become pregnant to leave their jobs. Companies do this, labor advocates argued, to avoid the legal requirement of three months' fully paid maternity leave for workers who give birth.

The coalition that filed the complaint argued that pregnancy testing by employers and the failure of the labor authorities to combat it—sometimes by omission, sometimes by overt support of the employers' discriminatory policy—violated Mexico's obligations under the NAALC. The complaint sought a U.S. NAO review, public hearings in cities along the Mexico-U.S. border, and the formation of an Evaluation Committee of Experts to report on employment practices related to pregnancy in Canada, Mexico, and the United States.[5]

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[4]See U.S. NAO Case No. 9701, *Submission Concerning Pregnancy-Based Sex Discrimination in Mexico's Maquiladora Sector,* at 4.

[5]Ibid., at 7.

In January 1998 the U.S. NAO issued a report confirming widespread pregnancy testing that discriminated against women workers. Concluding ministerial consultations in October 1998, the labor secretaries of Canada, Mexico, and the United States approved a program of workshops for government enforcement officials, outreach to women workers, and an international conference on gender discrimination issues. In the meantime, several U.S. companies in the *maquiladora* zones announced they would halt pregnancy testing, and legislation was introduced by opposition members of Congress to make a prohibition explicit.

At the international conference in Mexico in early March 1999, Mexican government officials acknowledged the unlawfulness of employee pregnancy testing and the failure of government authorities to halt it. They said they would prepare new instructions to labor department officials to put an end to the practice.

It is still too soon to know if a thorough change in policy and practice will take shape. A follow-up report by Human Rights Watch in December 1998 found that several of the firms that said they would unilaterally stop pregnancy testing had not ended it entirely (Human Rights Watch 1998). But the NAALC complaint made an international affair of what had been a decades-long, hidden, entrenched, accepted practice in Mexico's burgeoning *maquiladora* sector. It set in motion a dynamic for changing the practice through new employer policies, proposed legislative changes, and escalated international attention if an evaluation committee of experts formed to address the case. The case and its attendant campaign efforts also elevated the visibility and influence of Mexican women's rights groups that had formerly been marginalized and ignored in their strictly domestic context.

THE WASHINGTON STATE APPLE CASE

In a major case accepted for review by Mexico in July 1998, a coalition of Mexican labor and human rights groups filed a wide-ranging complaint under NAFTA's labor side accord alleging failure of U.S. labor law to protect workers' rights in the Washington State apple industry. The complaint cited the lack of legal protection for farm-worker union organizing and bargaining rights, discrimination against migrant work-

ers, widespread health and safety violations, budget cuts in U.S. enforcement agencies such the NLRB and the Occupational Safety & Health Administration (OSHA), and employers' use of threats and intimidation in union representation elections at two major apple-packing and shipping plants.

Mexican trade unionists sent a delegation to observe two NLRB elections in apple-industry warehouse operations in January 1998, where the Teamsters had signed up a majority of workers into the union. Using anti-union consultants, those companies destroyed the union's majority in both workplaces through a campaign of threats, intimidation, and discrimination against union supporters. Appalled by what they witnessed in the NLRB election campaigns, as well as by pesticide hazards and other conditions among orchard workers whom the United Farm Workers were seeking to organize, the Mexican allies filed a complaint under the NAFTA labor agreement (Greenhouse 1998b).

Over 45,000 workers are employed in the orchards and warehouses of the largest apple-producing industry in the United States. Most workers come from Mexico, which is the largest single export market for Washington State apples. The petitioners asked the Mexican government to pursue avenues of review, consultation, evaluation, and arbitration available under the NAALC for a "persistent pattern of failure" by U.S. labor law authorities to prevent workers' rights violations in the Washington apple industry.

The Washington apple industry complaint prompted the first public hearing in Mexico, with widespread media coverage of the plight of workers and violations of their rights (Moore 1998). Consultations between the two countries' secretaries of labor contemplate further public hearings in both countries. Significantly, this case has the potential to reach a stage of economic sanctions against the industry, since it contains a safety and health count (Conley 1998)

The NAALC case shocked industry representatives. One company leader said that the NAALC should be revised or industry support for future trade agreements would be severely eroded. He called the NAALC "an open invitation for specific labor disputes to be raised into an international question" (Iritani 1998).

The NAO of Mexico issued its report on the case in August 1999,

when Mexico's secretary of labor formally requested ministerial consultations with the U.S. secretary of labor. This development sparked a new round of publicity and related attention to the conditions of migrant workers in the industry (Gorlick 1999).

The Washington apple case exemplifies the opportunities for creative use of labor rights clauses in trade agreement, even when they do not provide specific remedies like reinstatement, back wages, or bargaining orders. The case brought together the Teamsters and the Farm Workers unions, along with sympathetic U.S. human rights groups, in coalition with Mexican counterparts in the independent labor and human rights movements. They worked together in the Teamsters' organizing campaign in apple industry warehouses, and together prepared the complaint. Now they are preparing for public hearings, ministerial consultations, and further proceedings under the NAALC and coordinating testimony, media relations, and other campaign efforts. Their goal is to make the Washington State apple industry a model of good labor relations, good wages and benefits, and effective labor law enforcement for all of North American agriculture.

THE MCDONALD'S CASE

Joined by the Quebec Federation of Labor and the International Labor Rights Fund, the Teamsters union and its Quebec affiliates filed a NAALC complaint in October 1998 on the closure of a McDonald's restaurant in St-Hubert, Quebec, shortly before the union was certified to bargain for workers there. This was the first NAALC case implicating labor law in a Canadian jurisdiction.

The coalition argued that McDonald's used loopholes and delaying tactics to extend union representation proceedings before the Quebec labor board for one year. The company prolonged proceedings by arguing falsely that the restaurant was part of a larger chain where workers transferred among different facilities. McDonald's routinely appealed decisions in the union's favor. Finally it shut the restaurant when the union certification was about to be issued.

Although Quebec labor law is generally favorable to workers and unions, it is impotent in dealing with anti-union workplace closures. The Quebec courts have evolved a doctrine allowing employers to close

facilities even partially to avoid unionization, and to do it with complete impunity—the only jurisdiction in North America that does so (the U.S. Darlington doctrine prohibits partial closings but allows a total closure of the entire business even for an anti-union motive) (Commission for Labor Cooperation 1997).

In December 1998 the U.S. NAO announced that it had accepted the McDonald's case for review. In April 1999 the case was settled among the NAOs of the United States and Canada, the petitioners, and Quebec Ministry of Labor. Under the settlement, Quebec's government is forming a special commission to review provincial labor law on anti-union plant closings and to develop legislative remedies to the problem. The governments of Canada and Quebec wanted to keep the controversy within a domestic context rather than have it exposed to a public hearing and further international scrutiny. Such interplay of domestic and international interests is a new, important feature of activity under the NAALC.

THE FTAA

Unions in the United States, Canada, and Mexico are applying their heightened collaboration to the hemispheric arena. At a Miami summit meeting in 1994, Western Hemisphere countries made plans for a free trade agreement of the Americas (FTAA), with 2005 as the target year for such an agreement. Trade unions and allied labor rights advocates called for a strong social dimension in any FTAA. At an April 1998 "People's Summit" in Santiago, Chile, alongside an official governmental summit meeting, trade union delegates adopted three major demands. One was for recognition of a labor counterpart to the officially sanctioned Business Forum that meets with FTAA government trade negotiators. Another was to add the International Labor Organization's core labor standards to any FTAA. Finally, the unions called for adoption of a broader social charter in the FTAA that addressed the concerns of nongovernmental organizations outside labor.

Hemispheric trade unions are working mainly through ORIT, the regional trade union affiliate of the ICFTU, to address labor rights in the context of an FTAA. Significantly, unions also expanded links to NGOs in the hemisphere that embraced human rights, women, mi-

grant workers, indigenous peoples, farmers and farm workers, and other grassroots groups.

New space for social concerns in trade was evident at the 1998 heads of state summit in Santiago, in which talk of trade was matched for the first time by substantive talk of social issues. Indeed, what the governmental summit produced was not far from the parallel peoples' summit results. A final document by the heads of state called for a "social action plan" to promote core ILO labor standards, improve education, reduce poverty and inequality, expand democracy, and guarantee human rights.

The governments also agreed to create a committee on civil society to officially hear the views of labor, environmental, and other nongovernmental organizations as FTAA negotiations proceeded. It remains to be seen whose views the committee will hear, or whether the civil society committee will have access commensurate with that of the already-recognized Business Forum. In any case, this is the first formal trade-negotiating process with a role for civil society groups besides business.

3. Multilateral and Global Action on Labor Rights

Just as it arises under U.S. domestic law and in regional contexts like NAFTA and the FTAA, a labor-rights trade link is taking on greater importance at multilateral and global levels. Labor rights and trade are now high on the agendas of the United Nations, the ILO, OECD, WTO, and at international financial institutions such as the World Bank and the IMF.

UNITED NATIONS

The United Nations' Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights treat an array of workers' rights. They include both human rights matters (e.g., freedom of association, forced labor, child labor) and economic and social issues (e.g., decent wages, adequate health insurance, periodic holidays with pay). UN human rights complaint procedures are bureaucratic

and slow, but they can put hard pressure on countries to improve labor rights under the spotlight of scrutiny in the highest international forum.

ILO

Since its founding in 1919, the ILO has adopted 182 conventions that cover matters ranging from core standards such as freedom of association and nondiscrimination to detailed safety rules for maritime workers. The ILO has no power to compel compliance with its rulings, but it has far-reaching oversight authority with the potential to advance labor rights through the promotion of ILO norms and its investigating and reporting powers (delaCruz, von Potobsky, and Swepston 1996).

Growing concern over labor rights and labor standards in international trade has provoked new interest in the role of the ILO, which earlier had been more of a forum for set-piece clashes between capitalist and socialist countries. At its 1998 conference, the ILO adopted a Declaration of Fundamental Principles and Rights at Work, a set of core labor rights contained in seven conventions that called for the right to bargain collectively, prohibitions on forced labor, limits on child labor, and an end to race and sex discrimination in employment (ILO 1998).

Under the declaration, every member state is bound to respect these norms whether or not the country has ratified the relevant ILO convention. This has particular relevance for the United States. Of the seven core conventions, the United States has ratified one: Convention No. 105 on the abolition of forced labor. Other countries that ratified only one of the core conventions are Bahrain, Cambodia, China, Laos, Qatar, Solomon Islands, United Arab Emirates, and Zimbabwe.

Although the ILO does not have the power to sanction offenders, its powers of investigation and "jawboning" of employers and governments can often produce results. The ILO has been instrumental in freeing many imprisoned unionists around the world, for example. The AFL-CIO is making a new commitment to ILO action by U.S. unionists, backed up with staff and resources to carry it out. This can give more clout to the ILO in its worker rights advocacy. It can also strengthen ties with workers and unions from other countries.

WTO

The emergence of the ILO as a forum for treating labor rights and trade is directly connected to the WTO's reluctance thus far to engage the issue. The WTO fended off direct treatment of labor concerns at its December 1996 trade ministers' meeting. However, the ministers had to concede the link between labor rights and trade, declaring, "We renew our commitment to the observance of internationally recognized core labour standards." They named the ILO as "the competent body to set and deal with these standards." (WTO 1996)

Despite WTO resistance, labor rights advocates continued pressing for a labor rights link within WTO disciplines. Their action culminated in huge protests by labor, human rights, environmental, and other social movements at the WTO ministerial meeting in Seattle in December 1999. The meeting ended in disarray, with no move to further liberalize trade rules. Critics labeled the protesters protectionists and charged that the AFL-CIO was only seeking to protect members' jobs at the expense of workers in developing countries. But mostly unreported and unnoted was the strong alliance between trade unions of both developed and developing countries around a common program for linking labor rights and international trade (ICFTU 2000).

Continued pressure from trade unions and allied groups will ultimately move the WTO off the mark. In the long run—and perhaps in the shorter run, in light of the global economic crisis that arose in 1998 in the "emerging markets" of Asia, Russia, and Latin America—the economists' theoretical case for expanding global trade will have to be matched by political support from working people and their unions. Workers must have confidence that labor rights and labor standards will be integrated into global economic arrangements, especially in the WTO, to block a race to the bottom among trade competitors.

OECD

In 1976 the OECD devised "Guidelines for Multinational Enterprises" for firms operating in member countries. The OECD is the "rich men's club" of the global economy, coordinating policies among governments of the United States, Japan, Australia, Canada, New Zealand, and the

developed nations of Europe. In recent years, however, Korea and Mexico joined the OECD, Korea because of its rapid growth to become the world's eleventh industrial power (before the Asian financial crisis of 1997–98), and Mexico on the strength of its NAFTA ties to the United States and Canada.

The guidelines took shape after revelations of misconduct by multinational corporations in the 1960s and 1970s, especially after the revelations came to light in U.S. congressional hearings chaired by Senator Frank Church. The OECD guidelines cover a range of issues including antitrust matters, financial disclosure requirements, taxation, technology, and others. Section 6 of the guidelines covers employment and industrial relations. It provides for the right to organize and bargain collectively and for the affording of information to employee representatives to "obtain a true and fair view" of company performance. It bans discrimination and calls for advance notice of layoffs and cooperation with unions to mitigate the effects of layoffs. Finally, the Guidelines instruct management not to threaten to close or transfer operations to unfairly influence negotiations or interfere with the right to organize.

The OECD guidelines include a de facto complaint procedure, although the body avoids making specific findings of misconduct by individual companies. Instead, it holds an "exchange of views" on the "experience gained" under the guidelines, and issues "clarifications" of the guidelines as they apply to specific labor-management conflicts. Procedurally, unions that take recourse to the OECD must be careful not to accuse employers of outright violations of the guidelines, but to present a description of relevant facts and seek an interpretation. The OECD states explicitly that "observance of the Guidelines is voluntary and not legally enforceable." (OECD 1997)

Despite its limitations, some unions were able to use the OECD guidelines to advance their agenda, though more by public relations or interunion solidarity measures than through pressure brought to bear by the OECD. The United Mine Workers of America (UMWA) turned to the OECD following a 1988 labor dispute over layoff and recall protections at Enoxy Coal Co., a West Virginia mine owned by ENI, the Italian state-run energy company. A complex "exchange of views" was held among the union, the employers (both the U.S. subsidiary and ENI), and U.S. and Italian government "contact

points" that obtained the views of their own ministries or departments. Pressure on the Italian government by unions there helped resolve the dispute to the UMWA's satisfaction (Glade and Potter 1989).

In the 1980s a U.S. union faced with antilabor conduct by the local management of a U.S. subsidiary of a Swedish corporation used the OECD contact-point system to have Swedish unions pressure the Swedish government to persuade Swedish parent-company managers to convince their U.S. executives to halt its objectionable conduct (Glade and Potter 1989).

WORLD BANK AND IMF

After years of resistance to any link to social dimensions in their grant and loan programs, the World Bank and the IMF began addressing labor rights. The bank's 1995 World Development Report was devoted to labor market issues, and offered a definition of core workers' rights (World Bank 1995).

In the wake of the Asian financial crisis and particularly in connection with developments in Indonesia, the IMF conceded a need to take workers' rights into account in its lending programs (Brownstein 1997). The United States moved toward new measures that required labor rights considerations as a condition for continued U.S. financial support for the IMF (Sanger 1998).

Again, one should be careful not to overstate the capacity of these multilateral bodies to remedy labor rights violations. They all contain "soft-law" measures involving investigations, reports, recommendations, consultations, and the like, not "hard-law" adjudication and remedies under coercive state power. But they are important forums where aggressive use of oversight mechanisms can get results.

4. Private Sector Action on Labor Rights

The arenas for labor rights advocacy reviewed above involve government-created bodies and mechanisms, but outside of government, trade unions and human rights groups have engaged many companies and industries directly on labor rights.

ITS'S AND LABOR SOLIDARITY

The AFL-CIO is an important affiliate of the ICFTU, which joins central labor federations from around the world. Several individual U.S. unions are members of the ITS's, the sectoral international union bodies that group unions according to branch of industry. They include ITS's in the metalworking, food, energy, textile, transportation, and other key sectors of the global economy.

For decades, the ICFTU and the ITS's undertook international solidarity campaigns. A notable example came in the 1980s when the International Union of Food and Allied Workers (IUF) launched a campaign for workers at the Coca-Cola bottling plant in Guatemala, where successive union leaders had been assassinated and a strike was threatened with military intervention. The IUF's effort led to a peaceful resolution of the conflict with continued bargaining rights for the union, which has since played a key role in reviving civil society in Guatemala (Frundt 1987).

CORPORATE CODES OF CONDUCT

The ICFTU developed a campaign for corporate codes of conduct on international labor rights. Trade union and human-rights-group pressure convinced many companies to issue codes of conduct for their overseas subsidiaries and suppliers. For example, an Apparel Industry Partnership joining human rights organizations and brand-name clothing retailers such as Levi's and Reebok agreed on a code of conduct covering forced labor, child labor, health and safety, discrimination, the right to organize and bargain collectively, wages, and working hours. The apparel industry code requires supplier firms to respect workers' rights or risk losing contracts with the U.S. companies (BNA 1997). The partnership later formed the Fair Labor Association (FLA) to enforce their code and deal with issues such as independent monitoring, public disclosure of findings, and application of sanctions.

Unhappy with corporate involvement in the FLA, several unions and student groups promoted an alternative Workers Rights Consortium (WRC) for universities to monitor suppliers of university-branded ap-

parel and other products. A European labor-human rights coalition generated a similar effort to establish labor rights standards for overseas suppliers to European companies, called the Fair Trade Foundation.

Another code of conduct was initiated by the New York-based corporate accountability group Center for Economic Priorities. Based on the International Standards Organization (ISO) series of quality standards, this code is called "SA8000" (Social Accountability). It sets forth norms to be reviewed by professional accounting firms. Taking another tack, labor, human rights, and consumer groups developed product-specific codes of conduct for handwoven rugs (the Rugmark Foundation) and for soccer balls (the FIFA code, adopted by the International Federation of Football Associations).

A cautionary note is needed for private-sector codes of conduct. Such codes mainly address brand-name retailers concerned about their image among consumers. Their stance on labor rights seems more a response to the degree of uproar in the buying public than a commitment to sustained efforts to promote labor rights for their employees. Such codes are not catching on with companies less dependent on consumer goodwill (Bounds and Stout 1997). High hopes for the Apparel Industry Partnership were tempered by the difficulty in formulating a monitoring and enforcement system (Greenhouse 1998a). Concern that professional accounting firms will be insufficiently rigorous and lack the experience for effective labor rights monitoring calls into question the SA8000 plan. However, creative labor rights advocates found fertile ground for getting their message out through the use of these private mechanisms.

LITIGATION STRATEGIES ON LABOR RIGHTS

Even the time-honored American battle cry "see you in court" found resonance in international labor rights matters. Labor advocates launched innovative lawsuits in U.S. courts to vindicate international labor rights claims. In a path-breaking case in federal courts, a Korean union sued New York-based Pico Products, Inc., after the company abruptly shut its electronics factory near Seoul in February 1989. Three hundred workers, mostly women, lost their jobs in the shutdown. The union contract called for advance notice and severance pay, and the workers were unpaid for their final weeks of actual labor performed.

The suit alleged violation of their labor contract and interference with their contractual relationship by Pico's U.S. management.

Concerned about the strength of the union's case, Pico made a settlement offer that amounted to practically all the monetary damages that the workers could hope to obtain in winning the case. U.S. attorneys recommended accepting the settlement, but the workers chose to go forward to trial. For them, the satisfaction of a judicial determination of guilt was a higher priority than the money to be gained in a settlement with a nonadmission of wrongdoing.

The judge found all the facts favorable to the plaintiffs: a contract violation had occurred and damage to the workers resulted. However, on a technicality of New York corporate law called the "Felsen exception," the court found that the parent company was insulated from the acts of the Korean subsidiary. That decision was upheld on appeal.[6]

Regardless of the outcome of the Pico case, the breakthrough in reaching a full-scale trial in U.S. courts pitting a foreign labor union against a U.S. multinational corporation set an important precedent for future actions. Other lawsuits targeted owners of Guatemalan apparel factories to enforce back-pay judgments for workers there,[7] chemical companies whose workers were poisoned by pesticides banned in the United States,[8] owners of a Tijuana maquiladora plant for sexual harassment,[9] and energy companies in league with forced labor policies of the Burmese government.[10] Substantial damages claims were won in these cases.

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[6]See *Labor Union of Pico Korea v. Pico Products, Inc.*, 968 F.2d 191 (1992).

[7]Information on this case is available from the International Labor Rights Education and Research Fund in Washington, D.C.

[8]See *Dow Chemical Co. v. Castro-Alfaro*, 786 S.W.2d 674 (1990); see also Emily Yozell, "The Castro Alfaro Case: Lessons for Lawyers in Transcultural Litigation," in Lance Compa & Stephen Diamond, eds., *Human Rights, Labor Rights, and International Trade* (University of Pennsylvania, 1996), p. 273 (toxic tort case involving Costa Rican banana plantation workers).

[9]See "Workers Succeed in Cross-Border Bid for Justice" (*Maquiladora* sexual harassment case in California state court), *Border Lines* (November 1995), at 1.

[10]See International Labor Rights Fund, *Union of Burma v. Unocal*, plaintiffs amended complaint (suit against U.S. energy company for using forced labor in Burma, pending in federal district court in California).

Litigation in U.S. courts was also important defensively. For example, the International Longshoremen's Association successfully fended off secondary boycott charges by nonunion stevedoring companies when the union sought international solidarity from its counterpart in Japan.[11]

Lawsuits are cumbersome, slow, and expensive. Like any of the other forums outlined here, courtroom proceedings are not a single remedy for the array of labor rights violations that confront workers in the global economy. Still, a targeted legal strategy can hit a labor rights violator hard, both with adverse publicity and with punitive damages paid to workers.

Conclusion

Labor rights advocacy is the most direct challenge to the primacy of a marketplace ideology in which efficiency and profit are the highest values. Labor rights advocates promote values of fairness, justice, and solidarity in global commerce. The battle to achieve enforceable hard law that protects workers' rights in the global economy is an important contribution to the labor movement's revitalization.

Can a beleaguered movement take on multinational companies and the governments that appease them on these varied international grounds when there is so much still to do on organizing, collective bargaining, and domestic political action? There really is no choice. International trade policy is now a battleground for workers' rights, just as national economic policy was the focus of the great reform movements of the turn of the century and the New Deal of the 1930s. The multiple arenas of international labor rights controversy are also forums for labor rights advocacy. The opportunities they present are as varied, and potentially as powerful, as the challenges.

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[11]See *Canaveral Port Authority v. ILA,* Cert. Den. U.S. Sup. Ct. No. 95–381; *ILA v. NLRB,* 56 F.3rd 205 (1995).